

C O P Y *in opinion*

409-1

November 26, 1954

The Honorable Hugh Gregg
Governor of New Hampshire
Concord, New Hampshire

Dear Governor Gregg:

You have inquired whether a certificate of election should now be issued to Congressman Chester E. Merrow by virtue of the final determination of total count by the Secretary of State and prior to appeals to the Ballot Law Commission or the United States House of Representatives.

You are respectfully advised that in my opinion the answer to this question is in the affirmative and that a certificate of election should now be issued to Congressman Merrow.

It has long been established in New Hampshire that the Governor and Council do not judge the election of Representatives in Congress but rather count the votes in accordance with the Constitution for the purpose of determining the winner. At such time as the recount of the Secretary of State was completed and his final total announced, the winner has been established and is entitled to a certificate of election, subject to divestment either by action of the Ballot Law Commission or by the U. S. House of Representatives.

See: R. L., c. 34-a, ss. 4, II and 11
Opinion of the Justices, 58 N.H. 621

That such a certificate should now be issued becomes evident from two additional factors, one a matter of statutory interpretation and the second an application of practical factors:

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(1) R. L., c. 34-a, s. 4, II, provides in part that when the Ballot Law Commission meets to decide an appeal from a general election recount that if it shall appear that the appellant had the greatest number of votes the Commission shall change the declaration of the Secretary of State and "issue a certificate of such changed declaration to the appellant." This provision for the issuance of a certificate of change by implication presumes that a certificate of election had theretofore issued;

(2) Final appellate jurisdiction from the Ballot Law Commission lies exclusively in the U. S. House of Representatives under the provisions of R. L., c. 34-a, s. 11. So far as state law is concerned, the Ballot Law Commission is the final judge and there is no appeal from it provided by statute in the case of the election of a member of Congress, except to the U. S. House of Representatives.

Barring a special session, an appeal to Congress can only be made when Congress is in session. While it is to be hoped that the decision of the Ballot Law Commission on the present appeal may be rendered prior to January 3, 1955, there is no present assurance that this will be possible. It is believed that present statutory provisions for changed certification do not contemplate that New Hampshire should go without representation from the First District, commencing with the first day of the 84th Congress if final decision of the Ballot Law Commission has not then been reached.

Respectfully,

Louis C. Wyman
Attorney General

w/d